

# OFFICE OF THE ATTORNEY GENERAL



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Honorable John W. Rogers, Jr.  
Member, House of Representatives  
1424-18th Street, S.W.  
Birmingham, AL 35211

Ad Valorem Tax -- County  
Commission -- Taxation -- Tax  
Rates

If the 15 mills authorized by the state's Constitution have not been exhausted, then the provisions of either § 16-13-180, Code of Alabama 1975, or Amendment No. 373(f) to the Constitution of Alabama, 1901, can be followed. Enactment of millage in addition to the 15 mills authorized by the State Constitution must follow the provisions of the Lid Law, and legislative approval is necessary.

Dear Representative Rogers:

This opinion is issued in response to your request for an opinion from the Attorney General.

## QUESTION PRESENTED

Can the Jefferson County Commission seek voter approval for a property tax increase of up to three mills without legislative approval?

FACTS AND ANALYSIS

The Jefferson County Commission is considering asking the voters to increase the county's portion of sales tax levied from one to two cents for every dollar or, in the alternative, to raise the ad valorem tax by three mills to help solve the funding problems in county schools.

Section 16-13-180, Code of Alabama 1975, was adopted in 1927 to implement the provisions of Amendment No. 3 to the Constitution of Alabama, 1901. Amendment No. 3 authorizes the various counties and the school districts within the counties to levy and collect a special three-mill county ad valorem tax and a three-mill district ad valorem tax for public school purposes.

There was, in addition to these six-mills, a one-mill county ad valorem tax for public schools authorized by Article XIV, § 269 of the Constitution of Alabama, 1901. These seven-mills were originally required for full participation in the Minimum Program Fund for public schools.

Section 16-13-180 states as follows:

"Upon a petition signed by 200 or more qualified electors of any county to the county commission, said county commission shall order an election to be held at the time specified in said petition to determine whether or not a special tax shall be levied for public school purposes within said county; and, upon request of the county board of education to the county commission, said court shall order an election to be held at the time requested by the said board of education to determine whether or not a special tax shall be levied for public school purposes within any school tax district in the county under the control of such board; and, upon the request of any city board of education to the county commission, said court shall order an election to be held at the time requested by said board of education to determine whether or not a special tax shall be levied for public school purposes within said city. (School Code 1927, § 261; Code 1940, T. 52, § 254.)"

Since 1927, the Constitution of Alabama 1901 has been amended several times in reference to school funding. The first was in 1962 by Amendment No. 202 which authorized an additional five mills of county ad valorem tax for educational purposes. The second amendment was in 1980, Amendment No. 382 which authorized an additional ad valorem tax of three mills for district school purposes. These constitutional provisions total 15 mills of ad valorem tax which have been constitutionally set aside for public schools.

The Property Tax Relief Laws, commonly referred to as the Lid Law (Amendment No. 373, Constitution of Alabama 1901), place certain restrictions on access to taxes on property. Amendment No. 373(f) relates to public schools. This section establishes the requirements for increasing the millage at the local level beyond the 15 mills authorized under the State Constitution. The requirements pursuant to Amendment No. 373(f) are as follows:

"On or after October 1, 1979, any county, municipality or other taxing authority, may at any time increase the rate at which any ad valorem tax is levied above the limit otherwise provided in this constitution; provided, that the proposed increase to be made pursuant to this subsection shall have been (1) proposed by the governing body of the taxing authority after a public hearing on such proposal, (2) thereafter approved by an act of the legislature, and (3) subsequently approved by a majority vote of the qualified electors residing in the taxing authority who vote on the proposal at a special election called and held in accordance with the law governing special election. . . ." (Emphasis added.)

Prior to the Lid Law, local school systems had to exhaust the 15 mills authorized under the Constitution before they could levy any additional millage. The school systems may now utilize the procedures set out in Amendment No. 373(f) to increase local ad valorem taxes regardless of the status of the 15 mills authorized by this state's Constitution. The Lid Law, however, does place a lid on the total amount of ad valorem taxes payable to the State and to all counties, municipalities, and other taxing authorities with respect to the several classifications of taxable property.

Subsection (i) of Amendment No. 373 sets the lid on the amount of ad valorem taxes payable as follows:

"Except as otherwise provided in this Constitution, including any amendment thereto, whenever adopted with respect to taxable property located in the City of Mountain Brook, the City of Vestavia Hills, or the City of Huntsville, the amount of ad valorem taxes payable to the State and to all counties, municipalities and other taxing authorities with respect to any item of taxable property described as Class I property shall never exceed 2 percent of the fair and reasonable market value of such taxable property in any one ad valorem tax year, such amount with respect to any item of Class II property shall never exceed 1 1/2 percent of the fair and reasonable market value of such taxable property in any one taxable ad valorem tax year, and such amount with respect to any item of Class IV property shall never exceed 1 1/4 percent of the fair and reasonable market value of such taxable property in any one ad valorem tax year, and such amount with respect to any item of Class III property shall never exceed one percent of the fair and reasonable market value of such taxable property in any one ad valorem tax year. Whenever the total amount of ad valorem property taxes otherwise payable by any taxpayer with respect to any item of taxable property shall exceed any one ad valorem tax year, the maximum amount of such taxes committed by this section, such amount of taxes shall be reduced by subtracting that amount of tax due that is in excess of the amount of tax otherwise permissible under the Constitution." (Emphasis added.)

#### CONCLUSION

If the three mills suggested by the Jefferson County


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Commission are in addition to the 15 mills authorized under the state's Constitution, then the provisions of the Lid Law must be followed and legislative approval is necessary. However, if the 15 mills authorized by the state's Constitution have not been exhausted, then the provisions of either § 16-13-180, Code of Alabama, 1975, or Amendment No. 373(f) to the Constitution of Alabama 1901, can be followed.

Sincerely,

JIMMY EVANS  
Attorney General

By-



JAMES R. SOLOMON, JR.  
Chief, Opinions Division

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